Supreme Court, U.S.
FILED
NOV 12 1992
OFFICE OF THE CLERK

No. 92-686

---

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1992

---

COUNTY OF INYO

and COUNTY OF INYO

on behalf of DANIEL P., a Minor,

Petitioner,

vs.

ROBERT GUTIERREZ,

Respondent,

---

On Petition For A Writ Of Certiorari

---

# BRIEF FOR RESPONDENT IN OPPOSITION

---

LAWRENCE R. STIDHAM *
STEPHEN V. QUESENBERRY
MICHAEL PFEFFER
CALIFORNIA INDIAN LEGAL SERVICES
P.O. Box 993
Bishop, CA 93514
Telephone (619) 873-3581

*Counsel of Record

## Question Presented

The State of California's formulation of the question presented is inaccurate. For the reasons stated herein, the State's Petition does not meet this court's standards for discretionary review and should be denied.

## Statement of the Case

The court of appeal presumed that the Big Pine Paiute-Shoshone Tribe had a forum for determining paternity issues involving its members. See State's Appendix A, page 22. This presumption is consistent with this courts preference for tribal forums when domestic relations involving reservation Indians are involved. See Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989), Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, 476 U.S. 887 (1986).

Rather than holding that no tribal forum existed to resolve paternity disputes, the court held that no facts were offered in evidence to refute the presumption that a tribal forum existed. See State's Appendix A, page 15. Since the State had the burden of pleading and proving every fact essential to its claim for relief, its failure to do so required the court of appeal to hold that the superior court had no subject matter jurisdiction. See State's Appendix A, pages 17-19.[1]

## Argument

THE QUESTION PRESENTED BY THE STATE'S PETITION DOES NOT MEET THIS COURT'S STANDARDS FOR DISCRETIONARY REVIEW.

---

1. "In order to prove the authority of the state court to proceed here, all plantiff needed to have done was to present evidence that there was not existing tribal mechanism. No such effort was made, and we cannot adjudicate the issue solely on supposition." See State's Appendix A, pages 16-17.

Rules of the Supreme Court, Rule 10, discusses the considerations governing review of a Petition for a Writ of Certiorari. Rule 10.1(c) states the considerations for review of state court decisions.

> When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be settled by this court, or has decided a federal question in a way that conflicts with applicable decisions of the court.

In light of these considerations, it is clear this court should deny the State's Petition for Writ of Certiorari.

First, the decision by the Fourth District Court of Appeal was not certified for publication. California Rules of Court, Rule 977(a) states clearly that an opinion not ordered published "shall not be cited or relied on by a court or a party in another action...." Since the court of appeal's decision affects only the specific parties in this case, it cannot control other California cases involving paternity determinations of reservation Indians. Despite the State's arguments to the contrary, it is free to present its jurisdictional arguments in any other case raising these issues. The present case is not citable authority and does not provide an appropriate vehicle for the resolution of any important question of federal law.

Second, the holding of the appellate court does not conflict with any applicable decision of this court. The State argues that the decision "virtually emasculates the broad grant of jurisdiction given by Congress in Public Law 280 to California"

(page 16 of Petition for Writ of Certiorari). This statement is based on the erroneous conclusion that Public Law 280 divested tribes of their traditional control over the domestic relations of its tribal members. This court has held otherwise. See Bryan v. Itasca County Minnesota, 426 U.S. 373 at 383-90 (1976).

In Bryan v. Itasca County Minnesota, Id. at 384, this court held that Public Law 280's grant of civil jurisdiction (25 U.S.C. § 1322(a), 28 U.S.C. § 1360(a)) does not confer "general state civil regulatory control over Indian reservations" and does not divest tribes of their inherent and traditional control over their members. This court also noted that nothing in the legislative history of Public Law 280 "remotely suggests that Congress meant the Act's extension of civil jurisdiction to the states should result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than private, voluntary organizations" (Bryan, supra, at 389). See also California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207-12 (1987).

The court of appeal's decision is therefore consistent with this court's preference for tribal forums when resolving issues involving reservation Indians and its view that Public Law 280 does not divest California tribes of their traditional inherent authority to regulate the domestic relations of their members. Since there can be no doubt that paternity is a domestic relations matter (Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, supra, United States v. Quiver,

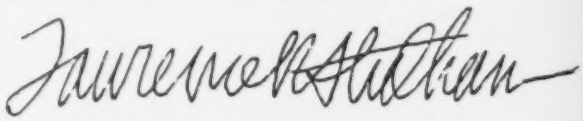
241 U.S. 602 (1916), and Fisher v. District Court, 424 U.S. 385 (1976)), the court of appeal's decision correctly adheres to the decisions of this court. Therefore, the State's Petition should be denied.

## Conclusion

The decision of the court of appeal for the Fourth District of the State of California was not certified for publication. As an unpublished decision, it cannot be cited as authority in any other case involving a paternity determination of reservation Indians. The State of California will have the opportunity to argue its position if and when such a case arises. However, even if the decision was citable authority, it is consistent with this court's decisions protecting and preserving the inherent authority of Indian tribes in domestic relations matters.

For these reasons, the State of California's Petition for Writ of Certiorari should be denied.

Respectfully submitted,



LAWRENCE R. STIDHAM

Counsel for Respondent.